

Tunis

AMITY, COMMERCE, AND NAVIGATION

Treaty concluded at Tunis August 28, 1797

*Senate advice and consent to ratification, with a condition regarding article XIV, March 6, 1798*¹

Alterations in articles XI, XII, and XIV concluded at Tunis March 26, 1799

Senate advice and consent to alterations in articles XI, XII, and XIV December 24, 1799

Ratified by the President of the United States January 10, 1800

*Amended by convention of February 24, 1824*²

*Superseded May 7, 1904, by treaty of March 15, 1904, between the United States and France*³

8 Stat. 157; Treaty Series 360⁴

[TRANSLATION]⁵

God is infinite.

Under the auspices of the greatest, the most powerful of all the Princes of the Ottoman nation who reign upon the earth, our most glorious and most august Emperor, who commands the two lands and the two seas, Selim Kan, the victorious son of the Sultan Moustafa, whose realm may God prosper

¹ The Senate gave its advice and consent to ratification "on condition that the fourteenth article of the said treaty, which relates to the duties on merchandise, (to be reciprocally paid by the citizens and subjects of the said parties, in their respective ports,) shall be suspended," and recommended that the President negotiate with the Bey and Government of Tunis on the subject of that article "so as to accommodate the provisions thereof to the existing treaties of the United States with other nations."

The text printed here is the amended text as ratified by the President.

² TS 361, *post*, p. 1096.

³ TS 434, *ante*, vol. 7, p. 862, FRANCE.

⁴ For a detailed study of this treaty, see 2 Miller 386.

⁵ The original treaty is in the Turkish language, with a French translation written opposite each article.

until the end of ages, the support of Kings, the Seal of Justice, the Emperor of Emperors.

The Most Illustrious and Most Magnificent Prince, Hamouda Pacha, Bey, who commands the Odgiak of Tunis, the abode of happiness, and the Most Honored Ibrahim Dey, and Soliman, Aga of the Janissaries, the Chief of the Divan, and all the Elders of the Odgiak; and the Most Distinguished and Honored President of the Congress of the United States of America, the most distinguished among those who profess the religion of the Messiah, of whom may the end be happy.

We have concluded between us the present treaty of peace and friendship, all the articles of which have been framed by the intervention of Joseph Stephen Famin, French merchant residing at Tunis, Chargé d'Affaires of the United States of America, which stipulations and conditions are comprised in twenty-three articles, written and expressed in such manner as to leave no doubt of their contents, and in such way as not to be contravened.

ARTICLE I

There shall be a perpetual and constant peace between the United States of America and the Magnificent Pacha, Bey of Tunis; and also a permanent friendship, which shall more and more increase.

ARTICLE II

If a vessel of war of the two nations shall make prize of an enemy's vessel, in which may be found effects, property, and subjects of the two contracting parties, the whole shall be restored: the Bey shall restore the property and subjects of the United States, and the latter shall make a reciprocal restoration, it being understood on both sides that the just right to what is claimed shall be proved.

ARTICLE III

Merchandise belonging to any nation which may be at war with one of the contracting parties, and loaded on board of the vessels of the other, shall pass without molestation, and without any attempt being made to capture or detain it.

ARTICLE IV

On both sides sufficient passports shall be given to vessels, that they may be known and treated as friendly; and, considering the distance between the two countries, a term of eighteen months is given, within which term respect shall be paid to the said passports, without requiring the congé or document, (which, at Tunis, is called testa), but after the said term the congé shall be presented.

ARTICLE V

If the corsairs of Tunis shall meet at sea with ships of war of the United States, having under their escort merchant-vessels of their nation, they shall not be searched or molested; and in such case the commanders shall be believed upon their word, to exempt their ships from being visited, and to avoid quarantine. The American ships of war shall act in like manner towards merchant-vessels escorted by the corsairs of Tunis.

ARTICLE VI ⁶

If a Tunisian corsair shall meet with an American merchant-vessel, and shall visit with it her boat, she shall not exact anything, under pain of being severely punished. And in like manner if a vessel of war of the United States shall meet with a Tunisian merchant-vessel, she shall observe the same rule.

In case a slave shall take refuge on board of an American vessel of war, the Consul shall be required to cause him to be restored; and if any of their prisoners shall escape on board the Tunisian vessels they shall be restored. But if any slave shall take refuge in any American merchant-vessel, and it shall be proved that the vessel has departed with the said slave, then he shall be returned, or his ransom shall be paid.

ARTICLE VII

An American citizen having purchased a prize vessel from our Odgiak, may sail with our passport, which we will deliver for the term of one year, by force of which our corsairs which may meet with her shall respect her; the Consul, on his part, shall furnish, her with a bill of sale, and, considering the distance of the two countries, this term shall suffice to obtain a passport in form. But, after the expiration of this term, if our corsairs shall meet with her without the passport of the United States, she shall be stopped and declared good prize, as well the vessel as the cargo and crew.

ARTICLE VIII

If a vessel of one of the contracting parties shall be obliged to enter into a port of the other, and may have need of provisions and other articles, they shall be granted to her without any difficulty, at the price current at the place; and if such a vessel shall have suffered at sea, and shall have need of repairs, she shall be at liberty to unload and reload her cargo, without being obliged to pay any duty; and the captain shall only be obliged to pay the wages of those whom he shall have employed in loading and unloading the merchandise.

⁶ For amendments, see convention of Feb. 24, 1824 (TS 361), *post*, p. 1096.

ARTICLE IX

If, by accident and by the permission of God, a vessel of one of the contracting parties shall be cast by tempest upon the coasts of the other, and shall be wrecked or otherwise damaged, the commandant of the place shall render all possible assistance for its preservation, without allowing any person to make any opposition; and the proprietor of the effects shall pay the costs of salvage to those who may have been employed.

ARTICLE X

In case a vessel of one of the contracting parties shall be attacked by an enemy under the cannon of the forts of the other party, she shall be defended and protected as much as possible; and when she shall set sail, no enemy shall be permitted to pursue her from the same port, or any other neighboring port, for forty-eight hours after her departure.

ARTICLE XI ⁶

When a vessel of war of the United States of America shall enter the port of Tunis, and the Consul shall request that the castle may salute her, the number of guns shall be fired which he may request; and if the said Consul does not want a salute, there shall be no question about it.

But in case he shall desire the salute, and the number of guns shall be fired which he may have requested, they shall be counted and returned by the vessel in as many barrels of cannon powder.

The same shall be done with respect to the Tunisian corsairs when they shall enter any port of the United States.

ARTICLE XII ⁶

When citizens of the United States shall come within the dependencies of Tunis, to carry on commerce there, the same respect shall be paid to them which the merchants of other nations enjoy; and if they wish to establish themselves within our ports, no opposition shall be made thereto; and they shall be free to avail themselves of such interpreters as they may judge necessary, without any obstruction, in conformity with the usages of other nations; and if a Tunisian subject shall go to establish himself within the dependencies of the United States, he shall be treated in like manner.

If any Tunisian subject shall freight an American vessel and load her with merchandise, and shall afterwards want to unlade or ship them on board of another vessel, we will not permit him, until the matter is determined by a reference of merchants, who shall decide upon the case; and after the decision the determination shall be conformed to.

No captain shall be detained in port against his consent, except when our ports are shut for the vessels of all other nations, which may take place with respect to merchant-vessels, but not to those of war.

The subjects of the two contracting powers shall be under the protection of the Prince, and under the jurisdiction of the Chief of the place where they may be, and no other person shall have authority over them. If the commandant of the place does not conduct himself agreeably to justice, a representation of it shall be made to us.

In case the Government shall have need of an American merchant-vessel, it shall cause it to be freighted, and then a suitable freight shall be paid to the captain agreeably to the intention of the Government, and the captain shall not refuse it.

ARTICLE XIII

If among the crews of merchant-vessels of the United States there shall be found subjects of our enemies, they shall not be made slaves, on condition that they do not exceed a third of the crew; and when they do exceed a third, they shall be made slaves: The present article only concerns the sailors, and not the passengers, who shall not be in any manner molested.

ARTICLE XIV ⁷

A Tunisian merchant who may go to America with a vessel of any nation soever, loaded with merchandise which is the production of the Kingdom of Tunis, shall pay duty (small as it is) like the merchants of other nations; and the American merchants shall equally pay for the merchandise of their country, which they may bring to Tunis under their flag, the same duty as the Tunisians pay in America.

But if an American merchant, or a merchant of any other nation, shall bring American merchandise under any other flag, he shall pay six per cent. duty: In like manner, if a foreign merchant shall bring the merchandise of his country under the American flag, he shall also pay six per cent.

ARTICLE XV

It shall be free for the citizens of the United States to carry on what commerce they please in the Kingdom of Tunis, without any opposition, and they shall be treated like the merchants of other nations; but they shall not carry on commerce in wine, nor in prohibited articles; and if any one shall be detected in a contraband trade, he shall be punished according to the laws of the country. The commandants of ports and castles shall take care, that the captains and sailors shall not load prohibited articles; but if this should happen, those who shall not have contributed to the smuggling shall not be molested nor searched, no more than shall the vessel and cargo; but only the offender, who shall be demanded to be punished. No captain shall be

⁷ For an amendment, see convention of Feb. 24, 1824 (TS 361), *post*, p. 1096.

obliged to receive merchandise on board his vessel, nor to unlade the same against his will, until the freight shall be paid.

ARTICLE XVI

The merchant-vessels of the United States which shall cast anchor in the road of the Gouletta, or any other port of the Kingdom of Tunis, shall be obliged to pay the same anchorage for entry and departure which French vessels pay, to wit: Seventeen piasters and a half, money of Tunis, for entry, if they import merchandise; and the same for departure, if they take away a cargo; but they shall not be obliged to pay anchorage if they arrive in ballast, and depart in the same manner.

ARTICLE XVII

Each of the contracting parties shall be at liberty to establish a Consul in the dependencies of the other; and if such Consul does not act in conformity with the usages of the country, like others, the Government of the place shall inform his Government of it, to the end that he may be changed and replaced; but he shall enjoy, as well for himself as his family and suite, the protection of the Government; and he may import for his own use all his provisions and furniture without paying any duty; and if he shall import merchandise, (which it shall be lawful for him to do,) he shall pay duty for it.

ARTICLE XVIII

If the subjects or citizens of either of the contracting parties, being within the possessions of the other, contract debts, or enter into obligations, neither the Consul nor the nation, nor any subjects or citizens thereof shall be in any manner responsible, except they or the Consul shall have previously become bound in writing; and without this obligation in writing, they cannot be called upon for indemnity or satisfaction.

ARTICLE XIX

In case of a citizen or subject of either of the contracting parties dying within the possessions of the other, the Consul or the Vekil shall take possession of his effects, (if he does not leave a will,) of which he shall make an inventory; and the Government of the place shall have nothing to do therewith. And if there shall be no Consul, the effects shall be deposited in the hands of a confidential person of the place, taking an inventory of the whole, that they may eventually be delivered to those to whom they of right belong.

ARTICLE XX

The Consul shall be the judge in all disputes between his fellow-citizens or subjects, as also between all other persons who may be immediately under

his protection; and in all cases wherein he shall require the assistance of the Government where he resides to sanction his decisions, it shall be granted to him.

ARTICLE XXI

If a citizen or subject of one of the parties shall kill, wound, or strike a citizen or subject of the other, justice shall be done according to the laws of the country where the offence shall be committed: The Consul shall be present at the trial; but if any offender shall escape, the Consul shall be in no manner responsible for it.

ARTICLE XXII

If a dispute or law-suit on commercial or other civil matters shall happen, the trial shall be had in the presence of the Consul, or of a confidential person of his choice, who shall represent him, and endeavor to accommodate the difference which may have happened between the citizens or subjects of the two nations.

ARTICLE XXIII

If any difference or dispute shall take place concerning the infraction of any article of the present treaty on either side, peace and good harmony shall not be interrupted, until a friendly application shall have been made for satisfaction; and resort shall not be had to arms therefor, except where such application shall have been rejected; and if war be then declared, the term of one year shall be allowed to the citizens or subjects of the contracting parties to arrange their affairs, and to withdraw themselves with their property.

The agreements and terms above concluded by the two contracting parties shall be punctually observed with the will of the Most High. And for the maintenance and exact observance of the said agreements, we have caused their contents to be here transcribed, in the present month of Rebia Elul, of the Hegira one thousand two hundred and twelve, corresponding with the month of August of the Christian year one thousand seven hundred and ninety-seven.

[The Aga Soliman's
signature
and seal]

[Ibrahim Dey's
signature
and seal]

[The Bey's
signature
and seal]

WHEREAS the President of the United States of America, by his letters patent, under his signature and the seal of state, dated the eighteenth day of December, one thousand seven hundred and ninety-eight, [SEAL] vested Richard O'Brien, William Eaton, and James Leander Cathcart, or any two of them in the absence of the third, with full powers to confer, negotiate, and conclude with the Bey and Regency of Tunis, on certain

alterations in the treaty between the United States and the Government of Tunis, concluded by the intervention of Joseph Etienne Famin, on behalf of the United States, in the month of August, one thousand seven hundred and ninety-seven, we, the underwritten William Eaton and James Leander Cathcart, (Richard O'Brien being absent,) have concluded on and entered, in the foregoing treaty, certain alterations in the eleventh, twelfth, and fourteenth articles, and do agree to said treaty with said alterations, reserving the same nevertheless for the final ratification of the President of the United States, by and with the advice and consent of the Senate.

In testimony whereof we annex our names and the consular seal of the United States. Done in Tunis, the twenty-sixth day of March, in the year of the Christian era one thousand seven hundred and ninety-nine, and of American Independence the twenty-third.

WILLIAM EATON

JAMES LEANDER CATHCART